

ANALYSIS OF ORIGINAL BILL

Author: Morrissey Analyst: Gloria McConnell Bill Number: AB 2094
Related Bills: See Legislative History Telephone: 845-4336 Introduced Date: 02/18/98

Attorney: Janet Ballou Sponsor:

SUBJECT: Child Support Enforcement/FTB Procedures and Responsibilities/Funding

SUMMARY

This bill, in general, shifts to the Franchise Tax Board (FTB):

- all the district attorneys' (DAs) responsibilities for establishing modifying and enforcing child support obligations and determining paternity in the case of children born out of wedlock and
- certain of the Department of Social Services (DSS) responsibilities as they relate to child support.

It appears that FTB also may be shifted DSS responsibility as the state's single agency responsible for child support enforcement; whether this shift is intended is not clear.

EFFECTIVE DATE

This bill would be effective and operative on January 1, 1999.

LEGISLATIVE HISTORY

AB 573 (Stats. 97, Ch. 599); AB 1395 (Stats. 97, Ch. 614); SB 247 (Stats. 97, Ch. 601), AB 1666 (Alquist, 1998); AB 1662 (Alquist, 1998); AB 2094 (Morrissey, 1998); AB 1823 (Cardenas, 1998); SB 1508 (Rainey, 1998); AB 2343 (Woods, 1998).

PROGRAM HISTORY/BACKGROUND

Federal law requires each state to have a single agency responsible for enforcing child support, but permits delegation of specific tasks to local levels. The Department of Social Services (DSS) is designated as the California state agency. By state law, the county district attorneys (DAs) are delegated responsibility for enforcing child support, which includes collecting current payments and delinquencies and determining paternity in the case of children born out of

DEPARTMENTS THAT MAY BE AFFECTED:

___ STATE MANDATE

___ GOVERNOR'S APPOINTMENT

Board Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
___X___ PENDING

Agency Secretary Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
DEFER TO ___

GOVERNOR'S OFFICE USE

Position Approved ___
Position Disapproved ___
Position Noted ___

Department Director Date
Gerald H. Goldberg 3/16/98

Agency Secretary Date

By: Date

wedlock. Once an ordered amount becomes delinquent, DAs are required to search for assets of the obligor and take collection actions as necessary to collect the delinquent account.

In 1993 (Speier, AB 3589; Stats. 92, Ch. 1223), Franchise Tax Board (FTB) began collecting delinquent child support through a pilot project in which DAs in six counties could voluntarily refer their delinquent child support accounts to FTB for collection as though they were delinquent personal income taxes. In 1995, the program was expanded to include voluntary referral from all counties (Speier, AB 923; Stats. 94, Ch. 906). Effective on January 1, 1998, DAs, unless exempted by DSS, are required to refer all child support obligations that they are responsible for enforcing that are 91 days or more delinquent to FTB for collection as though they are delinquent. San Diego County is exempted from the mandatory referral program. Additionally, DAs can voluntarily refer those child support delinquencies that are less than 91 days delinquent to FTB for collection as though they are delinquent personal income taxes. Collection action may not be taken for certain delinquencies, in which case the account is not referred or is withdrawn from FTB. To collect delinquent child support, FTB may use any of its tax information sources and tax collection remedies. Upon referral of the child support delinquency, FTB issues to the obligor a notice of the amount due and, if payment is not made, may issue orders to withhold to attach property of the debtor.

Additionally, DAs are authorized to refer current child support orders to FTB for collection, in which case FTB would use tax information to issue wage assignment orders (Kuehl, AB 573; Stats. 97, Ch. 599).

As of January 31, 1998, FTB's delinquent child support collection program has collected approximately \$192 million.

For fiscal year 1995-96, the total budget for child support enforcement and paternity establishment by DAs was approximately \$392 million (of which between 11% to 22% was devoted to establishing paternity). FTB's total projected budget for fiscal year 1998-99 is approximately \$384 million, of which less than 3% is devoted to child support collection.

SPECIFIC FINDINGS

Current federal law requires each state to have a single agency (referred to as the Title IV-D agency) responsible for enforcing child support, but permits delegation of specific tasks to local levels. Under Section 11475 of the Welfare and Institution Code (W&IC), the Department of Social Services (DSS) is designated as the California state Title IV-D agency. As the Title IV-D agency, DSS's duty is to administer the state plan for securing child and spousal support and determining paternity.

Under this bill, the FTB, as the administrator under Section 10354 of the Family Code, would have the duty to administer the state plan for securing child and spousal support, medical support and determining paternity, but the W&IC section that provides the same duties to DSS would not be repealed.

Currently, as the Title IV-D agency, DSS, among other things, is responsible for the following:

1. the statewide automated system for reporting child support obligations to the credit reporting agencies,
2. the Statewide Automated Child Support system (SACSS) and the Los Angeles automated child support system (ACES Replacement System),
3. the system for withholding issuance and renewal of business and professional licenses, and
4. generally prescribing all guidelines, procedures, formats, forms, notices, and regulations related to child support enforcement and paternity establishment.

Under this bill, FTB would be responsible for the above items 1 through 3 and prescribing certain of the procedures, formats, forms, notices, and regulations related to child support enforcement and paternity establishment.

Currently, the DAs have been delegated, under Section 11475.1 of the W&I Code, the responsibilities for establishing, modifying and enforcing child support obligations and determining paternity in the case of a child born out of wedlock, which includes locating absent parents. They have offices located in each county.

Under this bill, the above described responsibilities of the DAs would be shifted to the FTB, including the requirement that offices be located in each county.

Currently, FTB is a tax administrator that also is responsible for collecting certain non-tax delinquency, including child support. These are delinquencies and current support orders referred by DAs, who are responsible for enforcement and establishing paternity. San Diego County is not participating in FTB's child support collection program.

Implementation Considerations

The following are implementation considerations identified by FTB staff. Additional considerations may be raised as the bill is further analyzed and moves through the legislative process:

- It is unclear whether the author's intends that FTB would be California's Title IV-D agency. Section 10354 of the Family Code, as added by this bill, indicates that FTB would be the Title IV-D agency, but under existing law (Section 11475 of the W&IC, which is not being amended), DSS is the Title IV-D agency.
- Requiring FTB to be responsible for all the DAs enforcement and paternity activities, and have an office in each county, would dramatically expand FTB's role beyond the tax administration and collection experience of FTB's staff. Currently, FTB has staff, primarily auditors and collectors, in only 13 counties. Under this bill, FTB would have to significantly expand its staff to accommodate the added responsibilities, and it is unclear whether FTB would be allowed to contract for the services of county DAs and support staff who are currently working the child support and paternity establishment programs. If unable to

contract or otherwise employ these county personnel through the state civil service process, California could lose the experience and expertise of the county personnel in these areas. When FTB was transferred the Department of Motor Vehicles (DMV) responsibilities for collecting delinquent vehicle registration in 1993 (SB 452; Stats. 93, Ch. 60), any DMV employees who wanted to continue with the program were transferred to FTB. It is also unclear whether it is intended that San Diego's responsibilities would be transferred to FTB, given that the provision that allowed DSS to exempt San Diego County from FTB's collection program was not amended by this bill.

Under current law, the Attorney General (AG) must represent the FTB in all litigation matters unless the AG delegates the role to FTB. The DA is responsible for court actions. It is unclear whether court activities in connection with enforcement and paternity functions would be the responsibility of the AG or FTB counsel.

- This bill establishes a "Director of FTB" to, in general, overall manage securing support and establishing paternity. Under current law, the FTB's executive officer is appointed by the FTB, with the consent and approval of two-thirds of the membership of the Senate, and may be removed by two-thirds vote of the FTB. It is unclear whether the author intends the FTB's present executive officer to fulfill the duties of the "Director of the FTB."

Under this bill, the Director would appoint (1) a chief administrator of financial and computer operations, who would be an executive officer, and (2) appoint an administrator of support, who would be the successor to the DAs responsibilities in effect October 1, 1996. It is unclear whether the Director would be at a higher administrative level than FTB's present executive officer since the Director would appoint an administrator, who also would be an executive officer. Additionally, it is unclear as to why the succession date for the DAs' responsibilities is October 1, 1996, more than two years before the effective date of this bill, which is January 1, 1999.

- It is not known what problems a transfer of this magnitude would create and how it would be effectively and efficiently accomplished. Implementation plans, identification of potential problems and costs must await further clarification as to the implementation considerations, including whether it is intended that FTB also be California's Title IV-D agency and whether the shift of all the responsibilities identified in this analysis would be operative January 1, 1999. If the bill were enacted this fall, the FTB would have only three months to fully implement this bill. A detailed implementation plan would need to be prepared in cooperation with the counties and DSS to prevent disrupting the existing child support enforcement and paternity establishment programs, including the flow of current and delinquent support now being collected. A delay in the operative date would allow development of a formal implementation plan with appropriate time tables. It is suggested that the bill set forth operative/implementation dates and transitional rules/plans to provide for an orderly transfer of the various responsibilities.

- Currently, DSS and county programs are financed through federal and state funding. The counties are eligible for General Fund incentive payments based on compliance with federal and state requirements and collections. The FTB's child support program is financed through the General Fund and federal reimbursements. While certain reference to the incentive payments are stricken by this bill (Section 19272 of the Revenue and Taxation Code), the provisions in the W&IC that set forth funding mechanisms for the counties, including the incentive payments (Sections 15200, et. seq.) are not amended.

Technical Considerations

Technical considerations will be identified as the implementation considerations are resolved and the bill moves through the legislative process.

FISCAL IMPACT

Departmental Costs

Presumably, the expenditures by counties and DSS to perform the responsibilities transferred to FTB would be shifted to and reported under the FTB, consistent with the transfer of responsibilities to that authority. These expenditures include the cost of representing the state in judicial proceedings. Additionally, there would be a major increase in costs to develop the systems that would fulfill the functions currently performed by the counties and DSS. DSS is currently responsible for a federally mandated centralized payment and disbursement unit for all child support that will involve the implementation of a major system, which is subject to serious obstacles and a high consequence of error.

Assuming these shifts in responsibility may eventually result in some efficiencies, administrative costs might eventually be reduced. However, because of the significant differences in organizational structure of DSS, the counties and FTB, no immediate savings could be expected.

Collection Estimate

The collection implications of this bill are uncertain and potential impact could be significant. Assuming no change to current collection programs, there would be no identifiable collection impact. If current programs were improved as a result of this bill, collections could increase; if disrupted, collections could be dramatically reduced.

The bill should contain sufficient language to guarantee an orderly transition without disrupting tax collection activities. An orderly transition is also necessary to avoid disrupting FTB's other non-tax debt collection programs, including delinquent vehicle registration and student loans.

BOARD POSITION

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Pending.